

1 sellers could potentially exist.

2 Q Ms. Kravtin, have you done any research  
3 into the agreements that the complainants themselves  
4 have with other electric providers for pole  
5 attachments?

6 A No, I have not.

7 Q Would it surprise you to learn that the  
8 complainants that are in this courtroom today are  
9 paying an electric cooperative between \$17.50 and \$20  
10 for pole attachment?

11 A No, it would not because those  
12 cooperatives are not subject to the section 224 and  
13 the cable rate formula.

14 Q And that's the only reason it doesn't  
15 surprise you?

16 A I think that's a pretty major reason.

17 Q Do you know how many attachments the  
18 complainants have with this electric cooperative in  
19 Florida?

20 A No, I do not.

21 Q You haven't asked that question?

22 A I do not believe it was relevant to my

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 analysis, for the reason I just stated.

2 Q It's not relevant at all to determining  
3 the proper price for these pole attachments of the  
4 complainants on Gulf Power's poles?

5 A When you say not relevant at all, it is  
6 certainly something that I took into consideration in  
7 understanding what the various other -- well, the  
8 arguments that Gulf has advanced in support of its  
9 position, which I disagree with, which it shows  
10 examples of those rates and rates agreements are  
11 evidence in and of themselves of a fair market. I  
12 have indicated why I believe that not to be so.

13 So it has some relevance, but I believe I  
14 addressed that relevance and indicated why I believe  
15 in my opinion that it does not provide evidence of a  
16 free market rate.

17 Q You said you did take it into  
18 consideration, though?

19 A In the course of my analysis of the  
20 evidence in this case.

21 Q But that did not include looking at the  
22 contracts?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       No, it did not.

2           Q       And it did not include inquiring about the  
3       number of attachments?

4           JUDGE SIPPEL:   A lot of this has been  
5       asked and answered already.

6           MR. LANGLEY:   Your Honor, the reason I'm  
7       asking these questions right now is because she had  
8       first said I didn't look at it, and then she said I  
9       did take it into consideration.   So I'm trying to make  
10      sure --

11          THE WITNESS:   Excuse me.   You asked me if  
12      that was relevant, I believe, in your question that I  
13      answered.

14          MR. LANGLEY:   And in answering my  
15      question, Your Honor, I understood her to say I took  
16      that into consideration, and so I wanted to test that  
17      testimony by establishing what she did not do.

18          JUDGE SIPPEL:   She took it into  
19      consideration, but she said she didn't go and call  
20      people up and verify things.   She obviously was shown  
21      things by -- you know, she had access to records and  
22      documents when she prepared her testimony.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. LANGLEY: Your Honor, I'm not sure  
2 that she did because I --

3 JUDGE SIPPEL: You want to ask her that  
4 question?

5 MR. LANGLEY: I -- that is what I thought  
6 I had just asked. Let me see if I can rephrase the  
7 question, with Your Honor's permission.

8 JUDGE SIPPEL: Just a general -- just a  
9 straightforward question.

10 BY MR. LANGLEY:

11 Q Ms. Kravtin, have you seen the  
12 complainants' pole attachment agreements with  
13 Choctawhatchee Electric Company?

14 A No, I have not. I was -- what I was -- I  
15 would like to just expand that answer. What I was  
16 referring to was that I was certainly familiar with  
17 the argument Gulf Power had raised about the existence  
18 of rates paid by cable operators to co-ops. That's  
19 been raised in numerous filings, I believe, by Gulf  
20 Power in this case.

21 Q Ms. Kravtin, in the course of your  
22 continuing education, particularly considering the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 testimony you render in the field of pole attachments,  
2 do you try to stay current on reading economic and  
3 legal literature?

4 A Yes, I do.

5 Q Are you familiar with Professors Daniel  
6 Spulber and Christopher Yoo?

7 A I believe I have heard of the first name  
8 that you mentioned.

9 Q You have heard of Daniel Spulber?

10 A I believe I have, yes.

11 Q Are you aware that they have published an  
12 article in the Cornell Law Review entitled "Access to  
13 Networks: Economic and Constitutional Connections"?

14 A No, I am not.

15 Q That is not an article that you have read?

16 A Did you indicate it was in the Law Review?

17 Q The Cornell Law Review, yes, ma'am.

18 A That is correct. No, since I am not a  
19 lawyer, I don't regularly read the law reviews, no.

20 Q Well, you understand that to some extent  
21 law and economics have overlap? There are professors  
22 who do that? You know that, don't you?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 MR. SEIVER: Objection, Your Honor.

2 JUDGE SIPPEL: No, I'll permit the  
3 question. This is proper. If you can answer it.

4 THE WITNESS: No, I can. I'm just really  
5 -- this is interesting that now the tables are turned  
6 now, it's okay for the economist to say some things  
7 about legal issues.

8 Of course, I'm aware of that, and that's  
9 a point that I indicated obviously in my testimony, by  
10 referring to regulatory standards myself.

11 BY MR. LANGLEY:

12 Q Would you think it is important to have  
13 read a comprehensive article published on the subject  
14 of pole attachments that was published in a law  
15 review?

16 JUDGE SIPPEL: I guess you might explain  
17 what's the qualification of the person that wrote it.

18 MR. LANGLEY: Well, I'm getting to that,  
19 Your Honor.

20 JUDGE SIPPEL: Well, I mean how could she  
21 answer the question without that as a -- I mean if  
22 this is a -- if it's a note that was written by a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 student at Cornell as opposed to someone of the nature  
2 of Richard Posner, I think, you know, we ought to know  
3 that up front before we have to answer questions.

4 MR. LANGLEY: Your Honor, she has already  
5 said she is familiar with Professor Spulber's work.

6 JUDGE SIPPEL: All right.

7 THE WITNESS: I said I believe I'm  
8 familiar with the name. I would really -- if you  
9 could show me this work, then maybe I could evaluate  
10 further. But certainly I am not going to answer in  
11 the abstract.

12 MR. LANGLEY: Your Honor, may I approach?

13 JUDGE SIPPEL: Yes, you may.

14 (Gulf Power Exhibit 72  
15 marked for identification.)

16 BY MR. LANGLEY:

17 Q Ms. Kravtin, I am handing you what has  
18 been marked for identification purposes as Gulf Power  
19 Exhibit 72.

20 JUDGE SIPPEL: This will be marked for  
21 identification as Gulf Power Exhibit 72. It's a copy  
22 of a Cornell Law Review article dated May 2003. One

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 of the authors being Daniel Spulber. It looks like a  
2 91-page article. Now that's -- what do you want the  
3 witness to do with this?

4 MR. LANGLEY: I want her to first -- are  
5 we on the record?

6 JUDGE SIPPEL: Yes, we are.

7 MR. LANGLEY: I wanted the witness first  
8 to review the credentials of the authors to see if  
9 that refreshed her recollection on whether she knew  
10 these authors.

11 JUDGE SIPPEL: Okay. The credentials are  
12 right on the front page.

13 THE WITNESS: Yes, they appear to be a  
14 professor of law and associate professor of law.

15 BY MR. LANGLEY:

16 Q Do you -- I'm sorry.

17 A And again I -- it was my recollection that  
18 I had heard the name Daniel Spulber. I'm not really  
19 very familiar with him and not of his colleague at the  
20 University of -- the Vanderbilt University Law School.

21 Q I understand you have not read this  
22 specific article?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1           A       No, I have not.

2           Q       Have you read other articles by Professor  
3       Spulber?

4           A       Not that I can recall. Again, if I have  
5       the time to read this entire article, it may be that  
6       I might. But I really don't --

7                   JUDGE SIPPEL: That's not going to happen  
8       today.

9                   (Laughter.)

10           BY MR. LANGLEY:

11           Q       Ms. Kravtin, in what context do you know  
12       Professor Spulber's name?

13           A       The context that it's a name that I  
14       believe I had seen in various -- as you pointed out,  
15       there is a connection between law and economics, and  
16       certainly in my industrial organization studies it may  
17       have been something cited to, a work that he had done.

18           Q       Ms. Kravtin, would you please go back to  
19       page 26 of your testimony. I gather from your  
20       testimony on page 26 that you as an economist draw a  
21       distinction between the terms "crowding" and "full  
22       capacity"?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A       Yes, I do.

2           Q       That's an important distinction?

3           A       I believe it's an important distinction as  
4 I have described in my testimony.

5           Q       I mean you wouldn't have drawn the  
6 distinction if you didn't think it was important?

7           A       Correct.

8           Q       Has that always been your opinion, that  
9 there was a distinction?

10          A       It's certainly always been -- well, I  
11 can't answer always in the sense that I don't know if  
12 you are referring to another situation that might have  
13 a different context. But certainly the discussion in  
14 my testimony where I discuss full capacity and what it  
15 means in terms of rivalrous, and does not have that  
16 meaning, I believe those are concepts I would  
17 certainly embrace, based on the literature and my  
18 opinions. But I can't answer your question out of  
19 context.

20                   This is the first case -- I believe that  
21 this case is the first one where these issues have  
22 been tied to an economic criteria such as we are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 discussing in this case.

2 Q In the context of the Alabama Power, the  
3 FCC case, have you always drawn a distinction between  
4 crowding and full capacity?

5 A I'm sorry, can you repeat that question?

6 Q Yes, ma'am. In the context of Alabama  
7 Power, the FCC case, have you always drawn a  
8 distinction between crowded and full capacity?

9 A I don't believe I testified in that case,  
10 so I'm not sure in what context you were asking me.

11 Q That was a bad question. You had earlier  
12 said please give me some context for what you mean,  
13 and I'm talking about since the Alabama Power v. FCC  
14 case, in connection with your engagement by the  
15 complainants as an expert in this case, have you  
16 always distinguished between the terms crowded and  
17 full capacity?

18 A Has my position in this case with regard  
19 to crowding versus full capacity been the same? Is  
20 that what you are asking?

21 Q Yes, ma'am.

22 A I would answer yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           Q       And you believe the appropriate standard  
2 is full capacity?

3           A       Yes, I believe that is -- that is the  
4 appropriate standard, and I believe it's the standard  
5 spelled out in the APCo decision as well.

6           MR. LANGLEY: Your Honor, may I approach  
7 the witness?

8           JUDGE SIPPEL: Let me see if I can ask --  
9 can I ask a question? I know I'm incurring on your  
10 time, but if -- let's say hypothetically if you had a  
11 situation like this, okay, and the Eleventh Circuit  
12 talked in terms of crowded and full capacity, if the  
13 utility company could prove full capacity on a pole or  
14 a series of poles, would that be a condition precedent  
15 to recovering costs over and above marginal costs?

16          THE WITNESS: Well, that's the first part  
17 of the test is to demonstrate full capacity.

18          JUDGE SIPPEL: Well, what I'm saying,  
19 would that be one of the requirements as a sine qua  
20 non to recovering additional costs over and above the  
21 marginals in the -- you know, in the workout damages  
22 or costs, rather?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 THE WITNESS: No, that would be the first  
2 part of the test. Then --

3 JUDGE SIPPEL: Let me finish. If you  
4 don't do it that way, if you don't get to full  
5 capacity, then you are out of luck as far as seeking  
6 anything over and above the formula?

7 THE WITNESS: Correct. That's a necessary  
8 condition.

9 JUDGE SIPPEL: All right. Okay. That's  
10 the ticket. Now supposing that you couldn't prove  
11 full capacity -- well, no, let me rephrase that  
12 question.

13 Supposing that you proved crowded, would  
14 you meet -- without proving full capacity, if you  
15 proved crowded and you were able to get a conclusion  
16 drawn that there was a crowded series of poles, would  
17 you then have met that precondition to recovering  
18 something over and above marginal costs, or charging  
19 something over and above marginal costs?

20 THE WITNESS: Well, for the reasons I  
21 describe in my testimony, I think there is an  
22 important economic distinction, as I have come to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 understand crowding versus full capacity. So crowding  
2 can mean many different things, and I think Gulf has  
3 changed its position as to what it means by crowding.

4 That's why I think it's important for the  
5 commission to look at what would be an objective  
6 economic definition of full capacity because those  
7 terms could mean different things to different people,  
8 and I'm trying to in my testimony describe what would,  
9 from an economist's standpoint, what would those  
10 criteria be for proving something meaningful in an  
11 economic sense of full capacity and tying specifically  
12 to the term rivalrous. What does it mean in terms of  
13 economics to be rivalrous.

14 JUDGE SIPPEL: Well, let me try it again.  
15 If you are -- does the concept, from an economist's  
16 standpoint, does the concept -- as you say, we do see  
17 distinctions between the two. Does a full capacity --  
18 let's call it a full capacity network of poles. Does  
19 that assume or subsume that some or all of those full  
20 capacity poles are also going to be crowded? Or does  
21 that make a difference?

22 THE WITNESS: Well, I think that full

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 capacity would be a special case. You can have -- in  
2 other words, to be -- think of another use of some  
3 other infrastructure where when something is congested  
4 or crowded, it generally will tend to get to or be  
5 near getting to full capacity. Or you could think of  
6 it getting crowded or congested on its way to being at  
7 full capacity. But to get to full capacity, you would  
8 need to actually have to exclude the next user on that  
9 infrastructure.

10 So getting crowded, it's congested, but  
11 are you economically full? And you get to the state  
12 of fullness or full capacity if you just can't  
13 accommodate one other user without having to turn away  
14 the other.

15 JUDGE SIPPEL: It would be like an  
16 elevator at full capacity? If an elevator has a  
17 capacity of 101, and you've got 100 in there, you  
18 can't go on, you can't have one more. Right?

19 THE WITNESS: Well, in this case, we're  
20 thinking about a fixed capacity, and again one of the  
21 many properties of poles that I am pointing to and Mr.  
22 Harrelson describes is through make-ready you actually

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 in a short-term way are able to make space available.  
2 But in the case of -- in the case of, you know, the  
3 elevators as you described it, it would be crowded in  
4 the vicinity of that 101 limit, but then it's not  
5 actually at full capacity until it has 101 people, and  
6 then to have the next person, you would have to kick  
7 someone off the elevator in order for another one to  
8 come in.

9 JUDGE SIPPEL: All right. Good. Now then  
10 if you have full -- if you have a full capacity  
11 elevator, that's different than a crowded elevator?

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: Even from an economic  
14 standpoint?

15 THE WITNESS: Yes. Because you don't have  
16 to kick someone off in order to let someone else on.

17 JUDGE SIPPEL: All right.

18 THE WITNESS: So the distinction I make  
19 with regard to Gulf Power is that they have been able  
20 to accommodate additional users without -- and that  
21 they can't cite to evidence where because of that  
22 cable attachment in that one-foot space, they haven't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 actually had to exclude anyone because of that. They  
2 can't cite to any evidence.

3 JUDGE SIPPEL: Then if that's the case,  
4 would you say -- and my analogies may, you know, may  
5 be limping like the dickens from an economist's  
6 standpoint. But would you say that based on what you  
7 have seen thus far on these poles that are in issue  
8 that they might be -- some or all may be crowded, but  
9 you have not found one yet that's at full capacity?

10 THE WITNESS: Well --

11 JUDGE SIPPEL: I know you're not looking  
12 for --

13 THE WITNESS: I believe that is Gulf's --  
14 a requirement of Gulf's evidence in this case. I  
15 believe Gulf was asked if Gulf could identify  
16 instances where it did not accommodate or could not  
17 accommodate additional attachment because of a cable  
18 company attachment, and it answered it did not. I  
19 believe that was in deposition testimony that I cited  
20 in my testimony.

21 JUDGE SIPPEL: Yes, but I'm saying in  
22 terms of -- I'm trying to find out, what is the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 fundamental foundation from which you are giving  
2 economic opinions? From the standpoint of there being  
3 poles which are crowded? Or from the standpoint of  
4 poles which are being at full capacity, or both? Or  
5 does it not make a difference to you?

6 THE WITNESS: Well, I believe -- well, let  
7 me answer it this way, because it does -- it makes a  
8 difference in the context of that first part of the  
9 test.

10 JUDGE SIPPEL: Yes.

11 THE WITNESS: Whether they understand  
12 APCo. Just reading directly from the language is that  
13 it requires two things: the showing of full capacity  
14 and then if you show full capacity, you then have to  
15 go on and show a lost opportunity that not only is the  
16 pole full -- in other words, you would have to turn  
17 away another -- you wouldn't be able to accommodate  
18 another attachment, but that there is actually another  
19 attacher or attachment that wants to get on.

20 So you don't have any actual loss unless  
21 that buyer waiting in the wing, that actual bidder  
22 comes along, or there is an actual bona fide use by

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Gulf.

2 So I see the APCo test as twofold: One,  
3 demonstrating you are full, the pole is full, you  
4 can't do anything, you can't do your ordinary make-  
5 ready, you can't stand and make space available in  
6 some way. So, A, it's full, so you have to satisfy  
7 that.

8 But then if you satisfy that, you still  
9 have to show that Gulf would be out some money.  
10 Unless you show Gulf -- that's the second condition.

11 The first is a necessary condition. It  
12 alone is not sufficient because you have to satisfy  
13 the second of lost opportunity. In an economic sense  
14 that must mean you are out some money if you compare  
15 where Gulf would be with the cable attachment and  
16 without it, are they out some money because of that  
17 cable attachment. You have to show that.

18 JUDGE SIPPEL: And your position -- well,  
19 let me not put words in your mouth. But is your  
20 answer or is your analysis of the APCo holding the  
21 same whether or not the Court is using the word "full  
22 capacity" or whether it's using the term "crowded"

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 because I believe that it shows up both ways in  
2 various parts of the opinion.

3 THE WITNESS: Well, I agree, I think there  
4 is some use of both those words. But in the actual  
5 part of the decision that has been cited, including  
6 the hearing -- excuse me, the order --

7 JUDGE SIPPEL: The hearing designation  
8 order.

9 THE WITNESS: I believe I'm referring  
10 actually to the scheduling order where that describes  
11 the test was indented on the very front test. That  
12 test that says this requires a showing of full  
13 capacity and lost opportunity.

14 Then in that context, the Court used that  
15 phrase "full capacity" and also from an economist's  
16 South Texas Project, if we are talking about a  
17 situation where there is rivalry, rivalrous condition  
18 on the pole, as an economist that means to me it must  
19 be full in an economic sense.

20 The semantics of whether you're calling it  
21 crowded or full capacity is almost less important to  
22 me as an economist than what is the actual condition,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the underlying condition we're talking about. Can you  
2 fit another attachment or accommodate another  
3 attachment on this pole. It might be crowded, but if  
4 you can't, then it would satisfy full capacity from an  
5 economic standpoint.

6 JUDGE SIPPEL: It seems to me if you're  
7 talking about the condition of the pole being that,  
8 it's really the effect of the condition of the pole,  
9 whether you call the pole crowded or full capacity,  
10 it's the effect of the contour of that pole versus the  
11 next attacher coming along. If I'm hearing you right.  
12 If that's what I'm understanding you to say.

13 THE WITNESS: Yes. You have to exclude  
14 one of the existing attachments in order for there to  
15 be space or the ability to accommodate another  
16 attachment.

17 JUDGE SIPPEL: Okay. All right, I  
18 apologize, Mr. Langley. I didn't want to go into it  
19 all that deeply, but at least for the afternoon now  
20 maybe I'll understand what's going on. Go ahead.

21 MR. LANGLEY: Your Honor, do you want me  
22 to continue? I can tell you with regret, I will not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 be able to finish this afternoon.

2 JUDGE SIPPEL: Well, if you want to  
3 continue on this particular subject or some other?  
4 You are going to start another phase of your  
5 questioning?

6 MR. LANGLEY: I do have a couple more  
7 questions along this same line, but they are probably  
8 going to carry over to a lot of similar questions  
9 based on the response that she just gave to the Court.

10 JUDGE SIPPEL: All right. Well, let's see  
11 what you can do for another 15 minutes because I took  
12 up a lot of your time here.

13 BY MR. LANGLEY:

14 Q Ms. Kravtin, you mentioned in your  
15 response to the Court that the distinction is an  
16 economic distinction, not a legal distinction;  
17 correct?

18 A I'm sorry, can you repeat your question?

19 Q You mentioned in your response to the  
20 Court that the distinction between crowded and full  
21 capacity is an economic distinction, not a legal  
22 distinction. Is that right?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           A           I'd have to see my answer reread. I  
2 believe I said that what is important from the  
3 standpoint of my testimony as an economist was the  
4 underlying distinction as an economic matter between  
5 crowded or congested and a state of full capacity as  
6 synonymous with there being a rivalrous condition on  
7 the pole.

8           Q           So if I did not understand that correctly,  
9 are you saying that the distinction is an economic  
10 one, not necessarily a legal one?

11          A           I'm saying there is, as I testified, and  
12 came to analyze the situation, there is an economic  
13 distinction between crowded and full capacity. I'm  
14 not going to comment on whether there's a legal  
15 distinction. I'm addressing the economic distinction  
16 in my testimony, sir.

17                   JUDGE SIPPEL: That's my recollection. I  
18 don't think that she got into making that kind of a  
19 distinction. She was limiting herself to the  
20 economics or the economist's view of crowded versus  
21 full capacity. I think you can move on.

22                   BY MR. LANGLEY:

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           Q     Ms. Kravtin, earlier I was asking you some  
2           questions about whether that had always been your  
3           opinion, and I believe your answer was yes. Correct?

4           A     Yes. From an economics perspective.

5           MR. LANGLEY: Your Honor, may I approach  
6           the witness?

7           JUDGE SIPPEL: For what purpose?

8           MR. LANGLEY: To show her an exhibit.

9           JUDGE SIPPEL: What's the nature of the  
10          exhibit?

11          MR. LANGLEY: The nature of the exhibit is  
12          a draft outline where she used the term synonymously.

13          JUDGE SIPPEL: Let me see. Has this been  
14          marked as an exhibit?

15          MR. LANGLEY: I have marked it as Gulf  
16          Power Exhibit 73 for identification purposes. May I  
17          hand a copy to the witness?

18          JUDGE SIPPEL: Yes -- no, first to Mr.  
19          Seiver. Have you seen this, Mr. Seiver, before? Are  
20          you aware that counsel had it?

21          MR. SEIVER: Yes, I am, Your Honor. I  
22          furnished it to him in part of our expert production

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 earlier.

2 JUDGE SIPPEL: All right.

3 MR. LANGLEY: Your Honor, may I proceed  
4 with the question?

5 JUDGE SIPPEL: Yes, you may. Do you want  
6 the witness to look at any particular portion of this,  
7 or do you want to just first start out with her  
8 general familiarity?

9 MR. LANGLEY: I want to just start with  
10 general familiarity. I think that we are going to see  
11 that she doesn't need to read it again.

12 JUDGE SIPPEL: Good.

13 BY MR. LANGLEY:

14 Q Ms. Kravtin, have you seen this document  
15 that has been marked as Gulf Power Exhibit 73?

16 A Yes, I have.

17 Q Is this a copy of a draft report that you  
18 sent to counsel for complainants in March of 2005?

19 A No, it's not a draft report.

20 Q A draft outline of your testimony?

21 A Correct, as the e-mail suggests, it is a  
22 working draft outline. It is not a report.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)